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SIPDIS

DEPARTMENT FOR EUR/AGS

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SUBJECT: Headscarf Laws Withstand Challenge in Germany

Sensitive but unclassified; not for internet distribution.

¶1. Summary: The Hesse State Constitutional Court upheld a state law last week that prohibits civil servants from wearing religious symbols and attire. One of eight similar laws in effect in Germany's federal states, the law as applied allows state institutions to prevent civil servants, including public school teachers, from wearing Muslim religious attire such as headscarves while making exceptions for Christian symbols. The verdict can only be challenged now by individuals in local courts on the basis of whether or not certain forms of attire constitute religious or political symbols. End Summary.

Hesse's Head Scarf Ban

¶2. The State of Hesse passed a law in October 2004 prohibiting civil servants, including public school teachers, from wearing symbols or attire that express a religious or political affiliation. Hesse State Attorney Ute Sacksofsky challenged the law in August 2007 arguing that it discriminated against head-scarf wearers by violating their religious freedom, their right to hold public office, and their right to equal treatment under the law. On December 11, the court ruled against the challenge, arguing that the law does not mention the head scarf in particular and applies to all religious symbols and attire which suggest that civil servants are not entirely "neutral" in the eyes of the law (meaning ones that show a religious or political affiliation).

¶3. According to the law, the ultimate decision on which religious symbols and attire are permitted is left up to the administrator of each institution. Moreover, these decisions have to take into consideration "the Christian and Western tradition of Hesse," which creates a large loophole for certain symbols. Hesse Commissioner for Foreigners, Hans-Achim Michna, told Pol Specialist that in practice both Jewish and Christian symbols would be allowed. Sacksofsky challenged the loophole, saying that the law did not treat religions equally, and applied a privileged status to Christianity. Going forward, the law can only be challenged on a case-by-case basis by individuals in local courts.

The Head Scarf and the Election

¶4. At the time of its passage in 2004, the law was supported by an absolute majority of the Christian Democratic Union (CDU) in the state parliament over strong objections from the Free Democratic Party (FDP), the Social Democratic Party (SPD) and the Greens. The CDU has characterized the court's decision upholding the law as a political victory. Notably, the six judges originally nominated by the CDU and the FDP formed the majority who rejected Sacksofsky's challenge, while the five nominated by the SPD and the Greens supported it.

¶5. In a debate in the state parliament after the court's ruling, CDU majority leader Christean Wagner called the decision a great

success for the party, which faces re-election on January 27, 2008, and hopes to form a coalition with the FDP. Wagner asserted that Germany was a country with a Christian heritage, and that therefore these symbols convey values independent of faith. In an interview with Focus magazine December 16, Hesse Minister President Roland Koch (CDU) called for the banning of full-body coverings (so-called burkhas) worn by Muslim schoolchildren, although few, if any, Muslim schoolchildren wear such attire. Nancy Faeser (SPD) criticized the court's decision, saying that it opened up the possibility of numerous legal challenges in local courts and left individuals at the mercy of their supervisors with no legal protection.

#### Head Scarf Bans in Other States

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¶16. Eight of the sixteen federal states have passed head scarf bans for civil servants since 2004: Hesse, Baden-Wuerttemberg, Lower Saxony, Saarland, Bavaria, Berlin, Bremen and North-Rhine Westphalia (NRW). State parliaments in Brandenburg and Rheinland-Pfalz are currently considering such legislation. The six states with no bans or proposed legislation (Schleswig-Holstein, Hamburg, Mecklenburg-Vorpommern, Saxony, Sachsen-Anhalt and Thuringia) are areas where fewer Muslims live, with the notable exception of Hamburg.

¶17. In NRW, the law has faced repeated challenges, but has been confirmed on four separate occasions in various courts. Most recently, in an August 14, 2007 decision, the Duesseldorf Administrative Court determined that the headscarf was a "demonstrative" religious symbol, violating NRW school law which declares such "religious manifestations" at state-run schools illegal. The complainant announced she will appeal the court decision, indicating that if her plea were to be rejected also by the Higher Administrative Court in Muenster and the Federal Administrative Court in Leipzig, she would file a constitutional

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complaint with the Federal Constitutional Court in Karlsruhe.

¶18. Just a few weeks before the August decision, on June 29, 2007, a Duesseldorf court ruled that teachers in NRW could not wear any head covering or hat that acts as a surrogate for the headscarf. A teacher who had previously sued to be able to wear her headscarf was trying to get around a ruling that forbids the wearing of headscarves in schools by wearing a type of beret, which covered her ears and hair. The court disallowed this.

¶19. Comment: The ruling in Hesse continues the questionable precedent that head scarf laws set in state constitutional law by seemingly holding Christian and Muslim symbols and traditions to different standards and strengthening the impression of discrimination against Islam in Germany. Civil servants in Hesse are left in an ambiguous position, heavily dependent on the willingness of their superiors to allow them to wear their traditional symbols and dress. The question is highly politicized in the state and will undoubtedly be exploited by both sides in next month's election campaign. END COMMENT.

¶10. This message was coordinated with Embassy Berlin and ConGen Duesseldorf.  
POWELL